IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN

AT JODHPUR

O R D E R

Rajveer Singh & another Vs. State of Rajasthan another

D.B.CRIMINAL MISC.PETITION NO.1320/2005
Under Section 340 of
The Code of Criminal Procedure.

Date of Order: Sept.18, 2006

P R E S E N T

HON'BLE MR.JUSTICE N.N.MATHUR
HON'BLE MR.JUSTICE K.K.ACHARYA

Mr.Sandeep Mehta, for the petitioners.
Mr.Sanjeev Sharma, for the respondents.

REPORTABLE BY THE COURT: **(PER HON'BLE MR.MATHUR J.)**

1. The instant application under Section 340 CrPC has been filed by Rajveer Singh and Jagpal Singh, eighth and ninth respondents respectively in D.B.Habeas Corpus Petition No.2510/2003 "Atar Singh v. State of Rajasthan & others" disposed-of by the order dated 22.2.2005.

2. One Atar Singh alias Veer Singh submitted a written report at Police Station Tibi, District Hanumangarh stating inter alia that his uncle Nand Singh died on 17.12.2002 at night during the course of treatment in the Government Hospital at Hanumangarh town. The dead body of Nand Singh was taken to the house at about 4 AM in the morning. At that time, his father viz; Balwant singh was at home. He left the house for the STD Booth for informing other relatives about the death of Nand Singh. However, he did not return. Inspite of extensive search, nothing yielded. On 26.12.2002 at about 5 PM, one Basant Singh during conversation, divulged the fact that his missing father Balwant Singh was seen kidnapped by Jagdev Singh, Rajveer Singh, Jagpal Singh and Harpendra Singh alias Happy. Giving the details, he stated that on 17.12.2002, he had gone to Hanumangarh for attending the court hearing. While he was on the railway crossing on his way to Hanumangarh from Rawatsar at Chungi Naka No.6, a jeep driven by Sukhdev Singh arrived. He had seen missing person Balwant Singh sitting in the jeep alongwith Jagdev Singh, Rajveer Singh, Jagpal Singh, Harpendra Singh alias Happy, Virendra Singh and Sohanlal. Thus, it was suspected that Balwant Singh was kidnapped by the aforesaid persons. It was also averred that there was a land dispute between Balwant Singh and Sukhdev Singh & others. This was the reason for Sukhdev Singh & party to kidnap Balwant Singh.

On this information, a case was registered for the offence u/ss.364 and 143 IPC. Inspite of missing report lodged at the Police Station, Tibi, nothing was done, as such, the Habeas Corpus Petition was filed before this Court on 26.5.2003 seeking direction for production of the corpus viz; Balwant singh son of Maghar Singh by caste Jat Sikh aged 62 years resident of Masani, Tehsil Tibi, District Hanumangarh. The aforesaid persons were arrayed as respondents No.5 to 11. This Court by order dated 29.5.2003 issued notice to the respondents. A counter was filed by Rajesh Sharma, Dy.S.P., Sangaria stating that during the course of investigation, the statements of Atar Singh alias Veer Singh, Bhanwar Singh, Gurdev Singh, Jeet Singh, Basant Singh, Jagdesh Singh, Shyam Singh, Fanta Singh, Smt.Sarjit Kanwar, Rajendra Singh, Hemraj and Pawan Kumar were recorded. In addition, the statements of Sukhdev Singh, Harvendra Singh alias Happy, Jagpal Singh, Rajveer Singh, Sohanlal, Ujal Singh and Virendra Singh were also recorded. The search of the missing person Balwant Singh was made at various places but failed to get any clue regarding the missing person Balwant singh.

3. The Habeas Corpus Petition was listed before this Court on various dates i.e. 14.7.03, 18.8.03, 27.8.03, 24.9.03, 13.10.03, 5.11.03, 16.1.04, 3.2.04, 17.3.04, 29.4.04, 12.5.04, 12.7.04,

25.8.04, 8.10.04, 4.11.04, 5.1.05, 20.1.05 and lastly on 22.2.2005.

4. This Court from time to time impressed upon the State authorities to make search and produce the corpus viz; Balwant Singh. This Court took a serious view for the inaction on the part of the police authorities. On number of dates, the senior police officers were directed to remain present. Various police officers submitted status reports. It is evident from the proceedings of the Habeas Corpus Petition that extensive searches were made by the police within and outside the State. Various police parties were despatched at different places. The search notices (ishtiars) were also published. It will be convenient to give reference to the affidavits filed by police officers from time to time. The affidavit with respect to progress and investigation was filed on 16.8.2003 by Devendra Singh, S.P., Hanumangarh. Subsequent thereto, the affidavit was filed by Rajesh Sharma on 24.9.2003. Thereafter, the affidavits were filed by Manoher Singh Dy.S.P. Hanumangarh on different dates i.e. 12.10.2003, 5.11.03, 13.1.04, 3.2.04, 16.3.04, 12.7.04 and 24.8.04. Again, the progress reports were filed by Bhagwan Das, Circle Officer, Sangaria on 7.10.04, 3.11.04, 4.1.05 and 17.1.05.

5. The respondents No.5 to 11 in the Habeas Corpus Petition also filed their reply supported by the affidavit of Sukh Dev Singh on 23.9.2003. It was asserted that Balwant Singh was not missing. Affidavits of Khushi Mohd., Mukhtiyar Singh, Nawab Ali, Rajwant Singh, Ujagar Singh and Chand Singh were filed wherein they stated that Balwant singh was seen around his house. It was also stated that there was no STD facility available in village Tibi and, therefore, the statement to the effect that Balwant Singh had gone to STD Booth for giving information to other relatives about the death of Nand Singh, on face, is false & fabricated. It was also averred that there was a land dispute between the parties but the same was decided as back as on 6.11.1996 in their favour. However, with a view to harass them, Balwant Singh filed false and fabricated FIRs being 453, 454 and 455 of 2000. All the three cases were registered at Police Station, Hanumangarh. On investigation, the allegations made in the reports were found to be false and fabricated and, as such, the police gave Final Report in the said cases. Copy of one FIR being 453 of 2000 has been filed with the reply as Annex.R/8. Thus, it was asserted that Balwant singh is in the habit of abusing the process of the Court by way of filing false cases. It was also asserted that Balwant Singh is a history sheeter in Police Station, Rawatsar, District Hanumangarh. There are number of cases pending against him. It was also prayed that

the character and conduct of Balwant Singh be inquired from the Village Criminal Note Book, which is available at the concerned police station. It was also asserted that Basant Singh has deliberately given a false statement. Certain affidavits in that regard have also been filed.

6. This Court by order dated 22.2.2005 disposed-of the writ petition as follows:

> "After considering various reports submitted by the Investigating Agencies, we do not think that any case is made out for keeping the present proceedings pending. The complainant may take recourse in accordance with law.
>
> Therefore, the habeas corpus petition is dismissed."

7. After the Habeas Corpus Petition was dismissed on 22.2.2005, the missing person Balwant Singh on his own volition appeared before the S.H.O., Police Station, Tibi and filed an affidavit that he had gone to Punjab as per the advice of members of his family particularly for the reason of pendency of cases between him and Sukhdev Singh. He also stated that there was no hand in his abduction of Sukhdev Singh or anybody else. The police also recorded the statement of Balwant Singh u/s.161 CrPC. In the said statement, he stated that after going for making telephonic call, he had gone to Kelniya Chhoti Badi at the "dhani" of Natha Singh and there, he remained with Buta Singh

in his village Jhoradwala for about 15 days. Thereafter, he was approached by Jeet Singh and Baljeet Singh in a jeep. They were accompanied by his nephew Gurnam Singh. Jeet Singh and others told him that his son Atar Singh had filed F.I.R. against Sukhdev Singh and others for kidnapping him and, therefore, he was required to stay outside for 2-3 months. Jeet Singh told him that under the pressure, either Sukhdev Singh will surrender the land or pay money. Thereafter, Balwant Singh was taken to Sirsa (State of Haryana) by Jeet Singh and others and thereafter he stayed at various places. Thus, according to the petitioner Rajveer Singh, the statement of Balwant Singh shows that the family members of Balwant Singh all alone knew about the whereabouts of Balwant Singh and he was deliberately being kept out of way so that pressure could be mounted on Sukhdev Singh and the applicants herein for surrendering their lands. It is further pointed out that F.I.R. has been signed by Jeet Singh. Thus, according to the petitioners, it is clearly a case of blatant misuse of process of court wherein not only the State administration but the Court have been led to ride by the litigating party to secure his own interest and deliberately false evidence has been led which resulted in loss of huge amount of State Exchequer for no purpose whatsoever. It has also been stated that in the said case, the police has submitted the Final Report. On submission of the Final Report, notices were issued to

Atar Singh alias Veer Singh but he did not put in appearance. Thus, the Final Report was accepted by the order dated 9.9.2005. In these circumstances, a prayer has been made to initiate proceedings u/s.340 CrPC against Atar Singh, Balwant singh and Basant Singh.

8. A notice of the application was given to non-applicants. Pursuant to the order of this Court dated 12.5.2006, a preliminary enquiry was held by the Chief Judicial Magistrate, Hanumangarh.

9. The Chief Judicial Magistrate, Hanumangarh recorded the statements of Rajveer Singh and Jagpal Singh. The relevant record was also summoned from the concerned Police Station. The C.J.M. found that Balwant Singh and Basant Singh were involved in number of criminal cases and they were wanted by the police. It is also alleged that Jeet Singh has been involved in the murder of "Nirankaris". Thus, the challan has also been filed against him in TADA Act for terrorist activities. His brother Kuldeep Singh has also been involved in terrorist activities. The challan has also been filed against him in TADA Act. Similarl allegations are against Mohar Singh, another witness. Thus, as per the record, Balwant Singh and his associates are involved in criminal cases including some of the cases of terrorist activities.

It is further evident that on 23.8.2005 in a Camp in village Masani, wherein about 400 persons had assembled, the missing person viz; Balwant Singh made a declaration that he had gone out of State on his own volition and that he was not kidnapped by anybody. Learned CJM has prima facie found that Atar Singh alias Veer Singh filed a false affidavit before the High Court as to missing of Balwant Singh. The finding is that Balwant Singh was never kidnapped. The prima facie opinion of the Chief Judicial Magistrate is that the false affidavit has been filed by Atar Singh alias Veer Singh before the High Court with a view to pressurize the private respondents therein to settle the land dispute. The prima facie opinion of the learned Magistrate is that the allegations made in the application under Section 340 CrPC as against Balwant singh and others is correct.

10. After hearing learned counsel for the parties and on careful consideration of the entire matter, it appears that Atar Singh alias Veer Singh made a false statement on oath and filed affidavit before this Court, as such, he is guilty of offence u/s.191 read with 193 IPC. In committing the said offence, Basant Singh and Balwant Singh also shared the common intention, as such, there is prima facie case of offence u/ss.191 – 193 read with Section 34 IPC against them as well. The perjury appears to be deliberate and conscious and the conviction is

reasonably probable. Filing a false affidavit and abetting proceedings like Habeas Corpus petition before this Court, is a serious matter. It has to be curbed effectively with strong hand. Therefore, it is expedient in the ends of justice to get the complaint filed against the persons named above before the Court of Judicial Magistrate, First Class, having jurisdiction to take appropriate and proper criminal action against them.

11. Accordingly, we allow the petition and direct the Registrar General of this Court to nominate an officer of this Court to file a complaint before the competent Court as indicated above.

(K.K.ACHARYA), J. **(N.N.MATHUR), J.**

RANKAWAT JK, PS